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9 UNITED STATES DISTRICT COURT  
10 WESTERN DISTRICT OF WASHINGTON  
11 AT TACOMA

12 ARTHUR LEE SMITH Jr.,

13 Petitioner,

14 v.

15 KELLY CUNNINGHAM,

16 Respondent.  
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CASE NO. C09-5575 FDB

ORDER ADOPTING REPORT AND  
RECOMMENDATION  
TRANSFERRING SUCCESSIVE  
PETITION

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20 The Magistrate Judge recommends that this petition for habeas corpus relief be  
21 transferred to the Ninth Circuit Court of Appeals as a successive petition. Petitioner has filed  
22 response disputing the characterization of the petition as successive. Petitioner, nonetheless,  
23 “has no difficulty with this matter being sent to the Ninth Circuit Court of Appeals ...”

24 The Court, having reviewed the petition and amended petition, the motion to dismiss or  
25 transfer, the response, the Report and Recommendation of the Hon. J. Richard Creatura, United  
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1 States Magistrate Judge, Petitioner's Response to the Report and Recommendation, and the  
2 remaining record, does hereby find and Order:

- 3 (1) The Court adopts the Report and Recommendation;  
4 (2) This petition is transferred to the Ninth Circuit Court of Appeals pursuant to  
5 Circuit Rule 22-3(a).  
6 (3) This file should be administratively closed.  
7 (4) The Clerk is directed to send copies of this Order to Petitioner.  
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9 DATED this 3<sup>rd</sup> day of February, 2010.  
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14 FRANKLIN D. BURGESS  
15 UNITED STATES DISTRICT JUDGE  
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